[Cite as *State v. Kern*, 2014-Ohio-1298.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

State of Ohio

Appellee

v.

James A. Kern & James D. Kern

Appellants

Court of Appeals No. S-13-004
S-13-005

Trial Court No. 11 CRB 350
11 CRB 344

DECISION AND JUDGMENT

Decided: March 28, 2014

* * * * *

Thomas L. Stierwalt, Sandusky County Prosecutor, and
Norman P. Solze, Assistant Prosecuting Attorney, for appellee.

Mark D. Tolles, for appellants.

* * * * *

JENSEN, J.

{¶1} Appellants, James A. Kern ("James") and his father, James D. Kern ("Jim"), appeal from judgment entries of the Sandusky County Court District No. 2 convicting

them of interfering with a wildlife officer and obstructing official business, respectively. For the reasons that follow, we affirm the convictions.

{¶2} On Saturday, November 19, 2011, during youth deer gun hunting season, James took a photo of his eight year old daughter posing with the head of a deer that was harvested by her grandfather Jim decades before. James forwarded the photo to his girlfriend, Miranda Straight, with a text message that read "Look what Emmy got." The message was a joke intended for Miranda's son who had missed a deer earlier in the day. Miranda showed the photo to her son and forwarded it to other family members.

{¶3} In short time, the Ohio Department of Natural Resources, Division of Wildlife, received a complaint on its poaching hotline that a deer had been harvested by an adult during the state's youth deer gun hunting season. Wildlife Officer Brian Bury was assigned to the complaint. Bury's investigation led him to the residence of James Kern.

{¶4} When Wildlife Officer Bury arrived at James' residence, one bay of the three-bay attached garage was open. The wildlife officer walked into the open bay and knocked on a door leading into the interior of the home. Miranda Straight opened the door. The exchange was captured on Wildlife Officer Bury's uniform camera, relevant portions follow.

Officer Bury: Are you Miranda?

Miranda Straight: Yes

Officer Bury: Can I talk to you for a second?

Miranda Straight: Sure.

* * *

Officer Bury: I understand somebody got a big buck out here.

Miranda Straight: Yea, [James'] daughter.

* * *

Officer Bury: With a shotgun?

Miranda Straight: I couldn't tell ya, I was not here * * *.

* * *

Officer Bury: How old is [James' daughter]?

Miranda Straight: Eight.

Officer Bury: So you have some pictures of her with the deer, it's her first deer. So there must be lots of pictures of her posing with it and stuff?

Miranda Straight: I do not have any, no.

* * *

Officer Bury: So there are no pictures of her with this big buck she shot, her first deer ever?

Miranda Straight: No not that I have. May I ask why?

Officer Bury: I think you have a pretty good idea why. So who was she hunting with?

Miranda Straight: Her dad.

* * *

Officer Bury: Where is the deer at right now?

Miranda Straight: That I know of, it's at her grandparents' house.

* * *

Officer Bury: Is there any reason why people would say that she didn't shoot it, that he shot it?

Miranda Straight: Not that I know of.

Officer Bury: Is there any reason why you would say that?

Miranda Straight: Nuh uh.

* * *

Officer Bury: I don't want to make a big deal out of something that is not a big deal. We deal with this stuff all the time, this is not a real big deal. [James' daughter] is not the one who shot the deer is what I have been told, ok. When you shoot a deer you need to check a deer in.

Miranda Straight: Right, that is what Jim should have done because he is the landowner.

* * *

Officer Bury: The deer has not been checked in. Ok? The deer was never checked in. So we have a couple of issues.

* * *

Miranda Straight: You can talk to Jim.

* * *

{¶5} At the time, Miranda believed a deer had been harvested. She did not know that the photo was a fake and intended as a practical joke. In fact, during her exchange with Wildlife Officer Bury, Miranda confirmed the alleged harvest. She also confirmed the presence of at least one shotgun in the home.

{¶6} Before leaving the garage, Wildlife Officer Bury handed Miranda a business card and asked her to have James call the officer at James' convenience. Wildlife Officer Bury informed Miranda that he was going to Jim's house and specifically instructed her not to make any contact with Jim. Despite officer Bury's instruction, Miranda called Jim's ex-wife Linda and informed Linda that a wildlife officer was at the house investigating the harvest. In turn, Linda called Jim and informed him of the same.

{¶7} Miranda called her boyfriend, James, and informed him that a wildlife officer was in the garage and inquiring about "Emmy's deer." It was then that James told Miranda the photo was a fake. They argued. James became agitated. James called Wildlife Officer Bury and left the following message:

This is James Kern. My girlfriend said you were at my house.

Please call me at * * *. I would really appreciate who called you. I want to know who called you. If you don't want to give me that information, I'm telling you if you come back, you may not leave. Thank you. Bye.

{¶8} Meanwhile, when Wildlife Officer Bury returned to his vehicle, he called the sheriff's department to report the firearm.[1] When he got off the phone with the sheriff's department, Bury listened to the message James had left. He perceived the message as a threat to his life.

{¶9} While the wildlife officer was still in the driveway talking on the phone, Miranda and her boys came out side to get into Miranda's car. A minute later, James's father Jim pulled into the driveway and parked directly behind Wildlife Officer Bury. Jim got out of his truck, walked pass the wildlife officer and began "yelling" at Miranda. At the time, Officer Bury did not know who Jim was or whether Jim was the man who had just left the voicemail message. Concerned for his safety, Wildlife Officer Bury called for backup.

{¶10} At trial, Jim admitted he was irate when he got out of his vehicle. He was angry, not at the wildlife officer, but that Miranda was at James' home with her two boys despite the fact her boys had been listed as "protected" persons on a civil stalking

[1] Prior to arriving at James' home, wildlife officer Bury had run an inquiry on the Law Enforcement Automated Data System ("LEADS") and discovered that a civil stalking protection order had been issued against James in favor of Miranda's ex-husband. At the time, Bury did not know whether the order prohibited James from possessing firearms.

protection order Miranda's ex-husband had obtained against James. They were not allowed to be within 500 feet of James.

{¶11} Moments later, Sandusky County Sheriff Deputy Kenneth Arp arrived. He had just received notice from his supervisor that any firearms at the residence would need to be confiscated because of the civil stalking protection order. Deputy Arp questioned Miranda. She took him inside the residence and showed him Jim's shotgun. Deputy Arp seized the shotgun.

{¶12} In the meantime, Sandusky County Sheriff Captain Michael W. Meggitt and a second wildlife officer responded to the scene. The wildlife officers walked the wooded portions of the property in search of deer entrails.

{¶13} Deputy Arp spoke with Jim who repeatedly and adamantly denied that a deer had recently been harvested from the property. Deputy Arp explained Jim's demeanor as follows:

> Well, like I said, his demeanor at first was, I would say it was uncooperative and somewhat, I don't want to say hostile, that's a little bit too strong. He was just uncooperative. I think that he didn't understand why the sheriff's office was there. He might have understood why the wildlife officer was there, but he kept thinking that I was involved in the investigation.

{¶14} Deputy Arp conceded that Jim did calm down, at least until Jim received a phone call from his son James. Deputy Arp explained:

> It was after [Jim] got off the phone, [Jim] told myself and Captain Meggitt that he was just speaking to his son, [James]. And [Jim] told us that he was upset at his son, [James], over a firearm, it was a handgun. He said he had a handgun – [Jim] said that [James] had a handgun at [James'] residence that belonged to the dad, [Jim]. * * * And I remember him, he was upset about that.

{¶15} A few minutes later, James arrived. He drove his speeding truck into the yard through a large pool of rainwater in what Deputy Arp described as a "reckless manner." James got out of his car and said "What the hell is going on." Deputy Arp explained:

> [James] was temperamental at first. He got out and questioned us as to why we were there, what was going on, saying he didn't shoot or poach any deer. Again, like with his father, I told him we were not there to investigate him poaching any deer. I said the wildlife officers are. After that he, too, calmed down after a few minutes.

{¶16} Deputy Arp and Captain Meggitt questioned James about his driving in the yard and the voicemail message he left on the wildlife officer's phone. Jim repeatedly interrupted the questioning. Captain Meggitt instructed Jim to stop interfering. On at

least five occasions, Jim was instructed to go inside the residence. Eventually, Jim complied. When the wildlife officers came back from the woods, James was arrested for leaving what they deemed as a threatening voicemail on Wildlife Officer Bury's phone. Jim came out of James' house. Deputy Arp explained,

> [A]t this point, [Jim] was argumentative and riled up and he was just – he was advised, you know, this didn't have anything to do with him, just go back in the house. He kept asking questions, interfering, basically, getting in the way, and Captain Meggitt again asked him several times to go back into the house and he wouldn't go back into the house and he was taken into custody for obstructing by Captain Meggitt.

{¶17} On November 1, 2013, a jury found James guilty of threatening a wildlife officer in violation of R.C. 1533.67, a misdemeanor of the first degree. The jury found Jim guilty of obstructing official business in violation of R.C. 2921.31, a misdemeanor of the second degree.

{¶18} James was sentenced to 30 days in county jail, and fined $500. The jail sentence was suspended and he was placed on supervised probation for a period of two years on the condition that he (1) complete an anger management program, (2) refrain from violations of the law except for minor misdemeanor traffic or drug laws, and (3) comply with all rules and conditions of probation. Jim was sentenced to 30 days in county jail and fined $250. The jail sentenced was suspended and he was placed on

supervised probation with the same conditions as his son. Jim and James appealed. On April 3, 2013, this court ordered that the appeals be consolidated pursuant to App.R. 3(B).

First Assignment of Error

THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANTS IN NOT GRANTING THE MOTIONS OF THE APPELLANTS TO SUPPRESS EVIDENCE.

{¶19} In their first assignment of error, appellants assert the trial court erred when it failed to grant their motions to suppress.

{¶20} In the trial court, appellants argued that "everything here should be suppressed" because the officers stayed at the residence longer than they should have while investigating the call to the poaching hotline. The state disagreed, arguing instead that "this whole investigation would have been done much quicker but for the actions of the [appellants]." The trial court agreed holding the charged offenses occurred while the wildlife officer was lawfully investigating a wildlife violation.

{¶21} The Ohio Supreme Court has set forth the appropriate standard of review of a motion to suppress as follows:

> Appellate review of a motion to suppress presents a mixed question of law and fact. When considering a motion to suppress, the trial court

> assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. * * * Consequently, an appellant court must accept the trial court's findings of fact if they are supported by competent, credible evidence. * * * Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard. * * * . *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8 (internal citations omitted).

{¶22} Here, appellants argue the offenses occurred long after the wildlife officer should have determined no wildlife violation occurred. Appellants contend "at the time of the arrest of each of the individuals, the officers had been aware that the original tip that brought them there was not supported." To the contrary, the state argues that the trial court correctly determined that the offenses occurred while the wildlife officer was conducting a lawful investigation and that the tip was corroborated by Miranda's statement that a deer had in fact been taken the previous weekend and that it was taken in the woods behind James' home.

{¶23} Upon our review of the evidence, we find that the trial court's finding of fact is supported by competent, credible evidence. Accepting these facts as true, we find the trial court did not err when it denied appellants' motion to suppress. Appellants' first assignment of error is not well-taken.

Second Assignment of Error

THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANTS IN FAILING TO REQUIRE THE WITNESSES FOR THE STATE TO RESPOND APPROPRIATELY TO THE QUESTIONS PUT TO THEM ON CROSS-EXAMINATION.

{¶24} In their second assignment of error appellants contend that wildlife officer Bury and Captain Meggitt gave non-responsive answers during cross-examination. They claim that "the continuing failure of the State's witnesses to answer the questions with responsive answers added significantly to the time of the testimony." Evid.R. 611(A) provides that courts

> shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

{¶25} Trial courts are given great deference in controlling their dockets, and therefore, a reviewing court uses an abuse of discretion standard when reviewing a trial court's decisions in this area. *Mathewson v. Mathewson*, 2d Dist. Green No 05-CA-035, 2007-Ohio-571, ¶ 26. "When applying the abuse of discretion standard of review, an

appellate court is not permitted to substitute its judgment for that of the trial court." *Marx v. Marx*, 8th Dist. Cuyahoga No. 83681, 2004-Ohio-3740, ¶ 24 (citation omitted). We will not disturb the trial court's decision unless it is arbitrary, unreasonable, or unconscionable. *See, e.g. Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶26} Appellants cite several portions of the transcript to support their arguments in this assignment error. Upon our review of the record, however, we cannot conclude that the trial court abused its discretion in exercising control over the mode of witness interrogation. Appellants' second assignment of error is not well-taken.

Third Assignment of Error

THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANTS IN EXCLUDING TESTIMONY AND EXHIBITS RELATIVE TO REPORTS APPELLANTS HAD MADE TO THE SANDUSKY SHERIFF'S OFFICE, WHICH EVIDENCE WAS PRESERVED BY PROFFER.

{¶27} In their third assignment of error appellants first assert that the trial court erred by prohibiting them from presenting evidence to rebut state witness testimony that "one or both of the [Appellants] were anti-police or anti-authority." Appellants contend they were unfairly prejudiced by not being able to present evidence of several reports appellants had made to law enforcement. Appellants further assert that the trial court

erred when it overruled their objection to a statement in the state's closing argument that "[t]hey are anti-police officers or anti-law enforcement, its like they have something against law enforcement."

{¶28} After our review of the video and audio evidence, as well as the testimony evidence adduced at trial and the proffer of intended testimony and reports, we hold that the appellants were not prejudiced by the trial court's exclusion of the proffered evidence.

{¶29} As to the statements made in closing arguments, generally, prosecutors are entitled to considerable latitude in opening statements and closing arguments. *State v. Whitfield*, 2d Dist. Montgomery No. 22432, 2009-Ohio-293, ¶ 12. *Maggio v. Cleveland*, 151 Ohio St. 136, 140, 84 N.E.2d 912 (1949), paragraph one of the syllabus. A prosecutor may freely comment on what the evidence has shown and what reasonable inferences the prosecutor believes may be drawn therefrom. *State v. Lott*, 51 Ohio St.3d 160, 165, 555 N.E.2d 293 (1990).

{¶30} Here, the prosecutor did not err by arguing that appellants were "anti-police" or "anti-authority." There are several instances in the trial when Jim and James made comments that could be construed as anti-law enforcement. For example, during direct examination, Jim explained, "to me, my impression is they were acting like German Gestapo, that's what I accused them of. They weren't acting like police officers, they were acting like German Gestapo." Later, Jim admitted he was upset that the officers would not listen to him. Jim stated, "It's like we're God and you're nobody, you

just pay my wages and that's the way I felt about it." Jim also suggested during his testimony, "just because he's a policeman does not mean I trust him."

{¶31} During his testimony, when explaining why he left the voicemail message for wildlife officer Bury and his resulting frustration with the investigation, James asserted "They got to get you for something. They got to get you for something. That's all they got to do." When asked why he didn't park his truck along the roadway instead of pulling into the water-saturated yard, James stated, "I'm not parking my vehicle in a right-of-way because that gives [the officer] direct access to it." He further asserted, "I don't think officer Meggitt has any right telling me I can't control a vehicle." James also expressed what might be construed as anti-police sentiments while explaining what he did after he got out of his truck upon arrival at the residence:

> I get out of my truck, I throw my hands in the air to show I wasn't armed and I wasn't any danger and Officer Meggitt, man, he was right at me. What do you think you are doing? Ya, ya, ya, I mean, he just went right at me and I went right back at him. I'm not going to lay back. I have had Sandusky County Sheriff had a .9 millimeter to my head and I will not lay back. I said, shoot me. They just – they think they are God. They are gestapo.

When the prosecutor objected to James' "rambling," James interjected, "I want these people to know how cops are."

{¶32} After our review of the record, we hold that the statements made by the prosecutor during closing argument are based on the evidence introduced at trial and the prosecutor's reasonable inferences from that evidence. Accordingly, appellants' third assignment of error is not well-taken.

Fourth Assignment of Error

THE VERDICT AND JUDGMENT OF CONVICTION OF APPELLANT JAMES D. KERN WAS NOT SUPPORTED BY THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶33} In their fourth assignment of error appellants contend that James' conviction of threatening a wildlife officer in violation of R.C. 1533.67 was not supported by the manifest weight of the evidence.

{¶34} "A manifest weight of the evidence challenge contests the believability of the evidence presented." *State v. Wynder*, 11th Dist. Ashtabula No. 2001-A-0063, 2003-Ohio-5978, ¶ 23. When determining whether a conviction is against the manifest weight of the evidence, the appellate court must review the entire record, weigh the evidence and all reasonable inferences drawn from it, consider the witnesses' credibility, and decide whether in resolving any conflicts in the evidence, the trier of fact "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Prescott*, 190 Ohio App.3d 702, 943 N.E.2d 1092, ¶ 48 (6th Dist.), citing *Thompkins* 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). In

evaluating a manifest weight claim, "the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus.

{¶35} R.C. 1533.67 provides that "[n]o person shall interfere with, threaten, abuse, assault, resist, or in any manner deter or attempt to deter a wildlife officer * * * from carrying into effect any law or division rule governing the taking, possession, protection, preservation, or propagation of wild animals * * * ." In turn, R.C. 1531.13 authorizes wildlife officers to investigate potential violations of wildlife laws. *State v. Coburn*, 121 Ohio St.3d 310, 2009-Ohio-834, 903 N.E.2d 1204, ¶ 9.

{¶36} Neither the word "threat" nor the word "threaten" are defined in the statute. R.C. 1.42 provides that "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage." Therefore, "the language used is to be given its ordinary and accepted meaning unless a contrary purpose is plain." *Smith v. Ray*, 149 Ohio St. 394, 398, 79 N.E.2d 116 (1948). *Webster's New World College Dictionary* 1491 (4th Ed.2008), defines threat as "an expression of intention to hurt, destroy, punish, etc., as in retaliation or intimidation." To "threaten" is "to express the likely occurrence of (something dangerous, unpleasant, etc.)." *Id.*

{¶37} In this case, the jury was presented with an audio recording of a voicemail message James left for Wildlife Officer Bury while the officer was investigating a deer poaching complaint. In his message James stated, "[i]f you don't want to give me that

information, I'm telling you if you come back, you may not leave." James asserted the statement was not meant as a threat; he simply did not want the officer to leave the residence. To the contrary, Wildlife Officer Bury testified that he perceived the message as a threat to his life. "As an appellate court, we neither weigh the evidence nor judge the credibility of witnesses." *State v. Naugle*, 182 Ohio App.3d 593, 2009-Ohio-3268, 913 N.E.2d 1052, ¶ 32 (5th Dist.) It is our role to "determine whether there is relevant, competent, and credible evidence upon which the fact-finder could base its judgment." *Id.*

{¶38} After reviewing the entire record, we conclude this is not one of the exceptional cases where the evidence weighs heavily against the conviction or where the trier of fact lost its way and created a manifest miscarriage of justice in convicting James with a violation of R.C. 1533.67. Accordingly, appellants' fourth assignment of error is not well-taken.

Fifth Assignment of Error

THE VERDICT AND JUDGMENT OF CONVICTION OF APPELLANT JAMES A. KERN WAS NOT SUPPORTED BY THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶39} In their fifth assignment of error appellants contend that Jim's conviction of obstructing official business in violation of R.C. 2921.31 was not supported by the manifest weight of the evidence.

{¶40} R.C. 2921.31(A) provides:

> No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties.

{¶41} In the instant case, Captain Meggitt testified that Jim initially complied when he was asked to go into the residence. However, when he and Wildlife Officer Bury questioned James about the voicemail message and deer situation, Jim came back outside the residence and "began to obstruct Officer Bury and myself as we were attempting to speak with [James]." When asked how Jim interfered, Captain Meggitt explained

> He just always would – [Jim] would always try to interject his viewpoints of it's a frivolous complaint, wanting to know how he got information of the complaint, just, instead of letting the investigation take its course and all the answers would have come out * * * .

Captain Meggitt further explained that Jim's behavior made it difficult for Wildlife Officer Bury and Deputy Arp to conduct their investigations.

{¶42} After reviewing the entire record, we conclude this is not one of the exceptional cases where the evidence weighs heavily against the conviction or where the

trier of fact lost its way and created a manifest miscarriage of justice in convicting Jim with a violation of R.C. 2921.31. Accordingly, appellants' fifth assignment of error is not well-taken.

Sixth and Seventh Assignments of Error

> THE TRIAL COURT ERRED IN OVERRULING THE MOTION FOR JUDGMENT OF ACQUITTAL IN THE CASE OF JAMES D. KERN.
>
> THE TRIAL COURT ERRED IN OVERRULING THE MOTION FOR JUDGMENT OF ACQUITTAL IN THE CASE OF JAMES A. KERN.

{¶43} In their sixth and seventh assignments of error appellants contend that the trial court erred in not granting their Crim.R. 29(A) motion for a judgment of acquittal.

{¶44} Crim.R. 29(A) provides, in part, as follows:

> The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses.

{¶45} A court should deny a Crim.R. 29 motion if the evidence is such that "reasonable minds can reach different conclusions as to whether each material element of

a crime has been proved beyond a reasonable doubt." *State v. Bridgeman*, 55 Ohio St.2d 261, 263, 381 N.E.2d 184 (1978). When reviewing a Crim.R. 29 motion, the evidence is viewed in the light most favorable to the state. *State v. Wolfe*, 51 Ohio App.3d 215, 216, 555 N.E.2d 689 (9th Dist.1988).

{¶46} In regard to Jim's conviction for obstructing official business, appellants argue that there was "no evidence from the testimony of Officer Bury that he was inconvenienced, as he continued on his investigation." Appellants further argue that a person cannot be convicted of obstructing for failing to go into a house or talking loud to an officer while on property he owns.

{¶47} Upon our review of the record, the testimony from the trial reveals that Jim came out of the house after he was instructed to go inside and that he interjected his position on the investigation while the officers were questioning his son. In fact, Captain Meggitt testified that Jim's actions made it difficult for the other officers to conduct their investigations. Viewing the evidence in a light most favorable to the state, we find that reasonable minds could have reached different conclusions as to whether the elements of the crime of obstructing official business were proven beyond a reasonable doubt.

{¶48} In regard to James' conviction for threatening a wildlife officer, appellants argue James could not be found guilty of threatening a wildlife officer where there is no threat. Given the facts before the court, and viewing the evidence in a light most favorable to the state, we find that reasonable minds could have reached different

conclusions as to whether the elements of the offense of threatening a wildlife officer were proven beyond a reasonable doubt.

{¶49} Pursuant to the above, appellants' sixth and seventh assignments of error are not well-taken.

{¶50} The judgment of the Sandusky County Court District No. 2 is affirmed. Costs of this appeal are assessed to appellants pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

James D. Jensen, J _____
CONCUR.
JUDGE